IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 833 OF 2006

IN

COURT RECEIVE'S REPORT NO. 113 OF 2006

IN

SUIT NO. 1789 OF 1988

Najma w/o Ramzanali Rasekhinejad & Ors....Appellants.

Versus

Abbas Ali s/o Ali Akbar Safarali
Rasekhinejad & Others. ....Respondents.

Mr. D. H. Mehta a/w Mr. Hemang Engineer, Mr.D.D. Mehta & Ms. Deepti Adhav i/by Gordhandas & Fozdar for the Appellants.

Mr.Swapnil Bangur i/by M/s.Vinod Mistry & Co., for Pravin Shetty.

Mr. Kishore Jain i/by Mr.Tushar Goradia for the Respondents.

Mr. D.V.Deokar, 1st Asstt. to Court Receiver.

CORAM : R. M. LODHA, and
S. A. BOBDE, JJ.

DATED : 5TH DECEMBER, 2006.

P.C.:

We heard Mr. D. H. Mehta, Counsel for the appellants (hereinafter to be referred to as

"plaintiffs") and Mr. Kishore Jain, Counsel for the respondents (hereinafter to be referred to as "defendants").

2. On 22nd September, 1988, the Court Receiver was appointed in respect of the partnership business carried on in the name and style of New Persian Restaurant and Stores. It is not in dispute that pursuant to that order, the Court Receiver took possession of the subject premises on 1st October, 1988. Since then the suit premises have been under the lock and seal of the Court Receiver.

3. On 19th January, 2005, the Court Receiver submitted the report, stating therein, that the plaintiffs have failed and neglected to comply with the directions given by the Court Receiver to safeguard the property. The Court Receiver, therefore, sought directions for his discharge in the suit without passing accounts, subject to payment of costs, charges and expenses and commission of the Court Receiver by the plaintiffs. On the said report, the learned Single Judge vide order dated 1st February, 2005 directed the Court Receiver to publish an advertisement for inviting offers from some

interested persons to run the hotel. The Court Receiver was also directed to take necessary steps to protect the premises and the plaintiffs were called upon to deposit an amount of Rs.10,000/- towards the costs, charges and expenses, etc. The subject premises being not in use for 18 years had substantially deteriorated and needed comprehensive repairs. The estimate for repairs was got prepared. However, the plaintiffs as well as the defendants informed the Court Receiver that they were not in a position to incur the heavy expenses needed for repairs. The advertisement was also issued by the Court receiver for giving the premises on agency but the only offer that was received was for payment of royalty at the rate of Rs.5,000/- per month, by one Deepak Ram Tyagi, if the cost of renovation was to be borne by him. The said offer was found grossly inadequate. Mr. D. H. Mehta, Counsel for the plaintiffs, handed in one letter dated 2nd December, 2006 from one Mr. Pravin S. Shetty, expressing his desire to run the hotel in the subject premises for a period of five years for a monthly royalty of Rs.10,000/-. Since we were informed that cost of repairs would exceed Rs.10,00,000/-, we wanted to know from Mr. Mehta, whether the said Pravin S. Shetty

was ready and willing to deposit Rs.10,00,000/- immediately with the Court Receiver. Mr.Mehta submitted that a sum of Rs.5,00,000/- may be deposited within a week or so and remaining Rs.5,00,000/- would be deposited later on. we find that the offer of Pravin S. Shetty is not honest and bonafide and is only a ploy employed by the plaintiffs to prolong discharge of the Court Receiver.

4. The plaintiffs having neglected in keeping the subject property safe despite the repeated directions by the Court Receiver and they are also not ready and willing to pay the cost of repairs, in our considered view, the continuation of Court Receiver at the instance of the plaintiffs would not be justified. The Court Receiver having been appointed at the request of the plaintiffs, it is their obligation to take all necessary steps for preservation and protection of the property despite the appointment of the Court receiver, which they have failed to do and are also not ready and willing to bear the repair costs which are estimated to be Rs.10,18,016/-. In the circumstances, there is no justification for the Court Receiver to continue in respect of the subject premises. As directed by the learned Single Judge,

therefore, the Court Receiver stands discharged, without passing accounts, but subject to payment of costs, charges and expenses.

5. The Court Receiver shall restore possession of the subject premises to the defendants from whom possession was taken pursuant to the order dated 22nd September, 1988.

6. The appeal does not deserve to be admitted and is dismissed in limine.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)